

#6

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Asghar, et al  
Serial No. : 09/381,055 (U.S. National Stage  
of International Application No. PCT/SE99/00702)  
Examiner : To Be Assigned  
Filed : September 13, 1999 Group Art Unit: To Be Assigned  
For : NOVEL USE

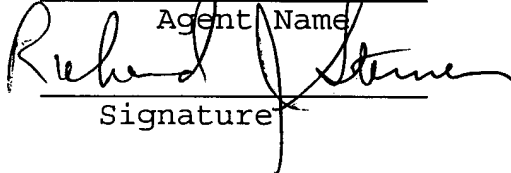
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Agent Name

35,372

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April 6, 2001

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BOX PCT

The Assistant Commissioner for Patents  
Washington, D.C. 20231

ATTN: PCT LEGAL OFFICE

**RECEIVED****20 APR 2001****Legal Staff  
International Division**

**RENEWED PETITION UNDER**  
**37 CFR §1.181(a) TO WITHDRAW HOLDING OF ABANDONMENT**

Sir:

This is in response to the PCT Legal Office's February 9,  
2001 Decision on Applicants' November 21, 2000 Petition under 37  
C.F.R. §1.181(a) to Withdraw Withholding of Abandonment.

In the first place, Applicants wish to point out for the  
record that the case for withdrawal of holding of abandonment in  
their previous Petition was made in light of incorrect

information provided by the U.S.P.T.O. In a November 7, 2000 telephone discussion, the paralegal issuing the Notification of Abandonment informed Applicants' Agent that the attempt to charge the required filing fee had been made on September 17, 2000. Accordingly, Applicants' previous Petition was made in light of that date, and the July and August 2000 monthly statements provided with the Petition were appropriate for the September 17, 2000 date erroneously communicated to Applicants' agent as being the critical one.

In any event, the PCT Attorney who issued the Decision has now clarified for Applicants that the crucial date is September 17, 1999. Applicants accordingly request that their request for withdrawal of the holding of abandonment be reconsidered in light of the appropriate facts set forth below.

It should first be emphasized that, at the time in question, internet access to the status of a deposit account was not available; Applicants were essentially "at the mercy" of the PTO for obtaining current information to enable them to comply with the requirements of 37 C.F.R. §1.25. With regard to 37 C.F.R. §1.25(a), the rule states, inter alia, that "[A]t the end of each month, a deposit account statement will be rendered. A remittance must be made promptly upon receipt of the statement to cover the value of items or services charged to the account and thus restore the account to its established normal deposit."

Applicants did not receive the Monthly Statement of Deposit Account for July 1999 from the PTO until September 15, 1999 and then only by facsimile in response to a telephone request that the PTO produce such in an expedited manner; in fact, the July statement sent by "normal channels" was not mailed by the PTO until October 22, 1999. A copy of the facsimile-transmitted July statement, with Deposits Accounts Branch cover sheet, showing the September 15, 1999 date of transmission by the Branch and receipt by Applicants, is provided herewith. Also provided herewith is a copy of the July statement sent by normal channels showing Applicants' receipt of same on October 25, 1999 and a copy of the envelope which contained the statement, showing a date of mailing of October 22<sup>nd</sup>.

By September 15, 1999, Applicants had received their statement for the month of August. Upon receipt of the July statement on that date, immediate action was taken to replenish the Deposit Account, as shown by the copies provided herewith of relevant documents. On September 16, 1999, a check for \$24,368.00 and one for \$17,389.00 (copies enclosed), the amounts of the "total charges" shown on the respective monthly statements for July and August, were remitted via Express Mail. The checks were accompanied by, inter alia, 1) a document, with a Certificate of Express Mail dated September 16, 1999, itemizing the various materials enclosed; 2) a transmittal letter specifically requesting posting of the checks to Applicants' Deposit Account (23-1703); and 3) a return receipt postcard. Copies of these 3 items are also provided herewith.

Although the return receipt postcard, received by Applicants September 24, 1999 (see enclosed copy), was not date stamped by the Accounts Branch, the replenishment checks and accompanying materials must have been received by the PTO on September 17, 1999, i.e., the date on which the attempt was made to charge the filing fee to Applicants' Deposit Account. Remittance in satisfaction of 37 C.F.R. §1.25 (a) was promptly made on September 16, 1999 (a Thursday) by Express Mail, and Express Mail calls for delivery the next day, in this case September 17, 1999. However, as shown on the Monthly Statement of Deposit Account for September 1999, the money was not posted to Applicants' account until September 20<sup>th</sup>.

Such a delay in posting the funds was beyond Applicants' control; Applicants' action on September 16, 1999 to replenish the Deposit Account constitutes full compliance under the rules. Applicants remitted sufficient funds to restore the deposit account to its established normal level (a level well in excess of that required to cover the application filing fee), and the PTO was in receipt of that remittance on September 17, 1999. Applicants properly complied with the rules pertaining to deposit accounts and should not be penalized for the delay in time between receipt by the PTO of the remitted funds and the posting of the funds to their account. It should be considered, in light of Applicants' actions, that sufficient funds were "on deposit," in accordance with the requirements of 37 C.F.R. §1.25 (a), on

September 17, 1999, the date the attempt was made to charge the filing fee.

Neither should Applicants be penalized for the PTO's failure to supply a deposit account statement at the end of the month, in accordance with a reasonable interpretation of the language of 37 C.F.R. §1.25(a) in this regard. The PTO's stance that the deposit account system is in place for the convenience of Applicants and, therefore, that it must always be Applicants' fault if there are insufficient funds in an account is inappropriate if the PTO does not fulfill its own responsibility in accordance with 37 C.F.R. §1.25, namely, to timely supply deposit account statements, a responsibility which must precede Applicants' obligations. It is Applicants' reliance on this fulfillment that led to the present situation in the first place.

The above should be sufficient to support Applicants' contention that they have met the requirement for properly maintaining a Deposit Account and that the holding of abandonment should be withdrawn. This notwithstanding, Applicants wish to bring the following additional facts to the Legal Office's attention.

An inspection of Applicants' record of replenishment of their Deposit Account will show that, without exception, Applicants remitted funds corresponding to the total charges for a given month in a timely manner so that the funds were posted into the account within two weeks of receipt of the statement for

said given month. Unfortunately, as demonstrated above, Applicants did not even receive the July 1999 statement until the middle of September. This oversight by the PTO notwithstanding, Applicants still managed to get the replenishment funds to the PTO by the crucial September 17, 1999 date. Had the PTO mailed the July statement in a timely manner, even so that it was received by Applicants by the end of August, the \$24,368.00 to replenish the total charges for the month of July would have been remitted and been on deposit in Applicants' Deposit Account well in advance of September 17, 1999, and no issue would ever have arisen.

The Legal Office's Decision on Applicants' first Petition states in part: "[I]t is applicants' responsibility to ensure that enough funds are contained in the Deposit Account and to determine if the funds to pay all the appropriate fees for the above-captioned application were subtracted from the Deposit Account." However, under the circumstances, it is unseemly to assert that Applicants could/should have had the slightest clue as to the developments in this case with respect to payment of the filing fee.

As acknowledged by the PTO, authorization was given by Applicants to charge their deposit account, and, thus, they could expect that an attempt would be made at some point to draw money from said account to cover the filing fee. However, had Applicants called the PTO Deposit Account Branch at any time during the period from the date of transmittal of the application

to the 30-month date, Branch personnel would not have been able to distinguish between a failed attempt to charge the filing fee and no attempt at all. In the present case, the attempt to charge the filing fee came only 4 days after the September 13, 1999 date of transmittal of the application. On the other hand, it has been the experience of Applicants' agent that as much as 15 months can elapse between the time of filing of an application and the charging of the filing fee to the deposit account. Such circumstances further belie the concept of the existence of the deposit account system "for the convenience of attorneys, and the general public...."

In view of the facts and circumstances set forth above, Applicants have, despite their diligence, been improperly penalized, and the holding of abandonment should be withdrawn. It is respectfully requested that such be effected, that the required filing fee be charged to Deposit Account No. 23-1703 and that the application be properly processed and brought forward for examination on the merits in the U.S. It is further requested that the application be granted the 102(e) date of September 13, 1999 to which it is entitled.

The Assistant Commissioner is hereby authorized to charge any additional fee which may be required for any reason to Deposit Account No. 23-1703.

Dated: April 6, 2001

Respectfully submitted,



Richard J. Sterner  
Reg. No. 35,372

Applicants' Agent  
Customer No. 007470  
(212) 819-8200

Agent's Direct line:  
(212) 819-8783

**Enclosures**



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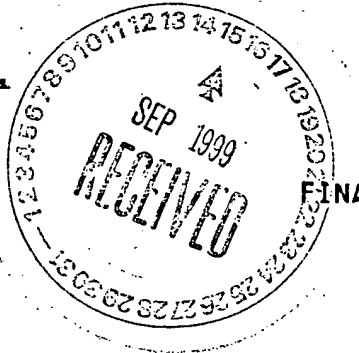
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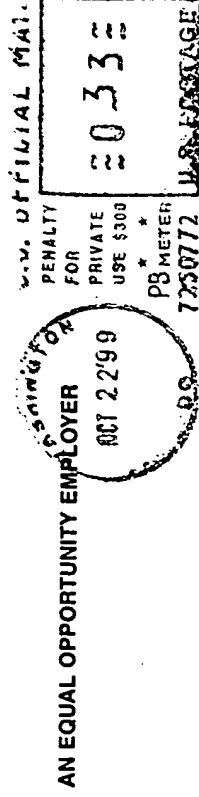
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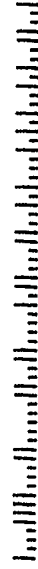
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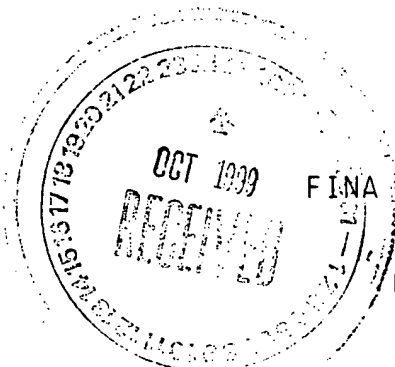
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AN AMOUNT SUFFICIENT TO COVER ALL SERVICES REQUESTED MUST ALWAYS BE ON DEPOSIT.				OPENING BALANCE 22736.56	TOTAL CHARGES 24368.00	TOTAL CREDITS 20675.00	CLOSING BALANCE 19043.56	

\*\*\* O.D. INDICATES OVERDRAWN

No. 181323

Vendor #: 00987000		Vendor: COMMISSIONER OF PATENTS	
DATE	VOUCHER	INVOICE	DESCRIPTION
08-31-99	441327	AUG 99	REPLENISH USPTO DEPOSIT ACCOUNT #23-1703 AUGUST 31, 99STATEMENT
			NET AMOUNT \$ 17,389.00

CHASE MANHATTAN BANK - Operating Account

WHITE & CASE

Limited Liability Partnership

CHECK FACE HAS A COLORED BACKGROUND ON WHITE PAPER

WHITE & CASE

CHASE MANHATTAN BANK  
90 Presidential Plaza  
Syracuse, NY 13203

LIMITED LIABILITY PARTNERSHIP  
1155 AVENUE OF THE AMERICAS  
NEW YORK, N.Y. 10036

No. 181323

\50-943/213

DATE: 09/16/99

\$\*\*\*\*\*17,389.00

PAY *Seventeen Thousand Three Hundred Eighty-Nine & no/100 Dollars*

TO THE ORDER OF

COMMISSIONER OF PATENTS  
AND TRADEMARKS

*New York*  
*James S. [Signature]*  
Two Signatures Required on Amounts over \$1,000

⑈181323⑈ ⑆021309434⑆755⑈541561⑈

Vendor #: 00987000		Vendor: COMMISSIONER OF PATENTS		No. 181321	
DATE	VOUCHER	INVOICE	DESCRIPTION	NET AMOUNT	
07-30-99	441328	JULY '99	REPLENISH USPTO DEPOSIT ACCOUNT #23-1703 JULY '99 STATEMENT	\$	24,343.00

**WHITE & CASE**  
 Limited Liability Partnership  
 CHASE MANHATTAN BANK - Operating Account

CHECK FACE HAS A COLORED BACKGROUND ON WHITE PAPER

**WHITE & CASE**  
 LIMITED LIABILITY PARTNERSHIP  
 1155 AVENUE OF THE AMERICAS  
 NEW YORK, N.Y. 10036

No. 181321

150-943/213

DATE: 09/16/99

PAY *Twenty-Four Thousand Three Hundred Forty-Three & no/100 Dollars*

\$\*\*\*\*24,343.00

TO THE ORDER OF

COMMISSIONER OF PATENTS  
 AND TRADEMARKS

*New York*  
*[Signature]*  
 Two Signatures Required on Amounts over \$1,000

⑈ 181321 ⑈ ⑆ 021309434 ⑆ 755 ⑈ 54156 ⑈



<p>"Express Mail" Label No. EH623283139US</p> <p>Date of Deposit <u>September 16, 1999</u>. I hereby certify that this paper is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10 on the date indicated above and is addressed to the: Assistant Commissioner for Patents, Washington, D.C. 20231.</p> <p><u>Tajha Livingstone</u> (Type or print name of person mailing paper or fee)</p> <p><u>Tajha Livingstone</u> (Signature of person mailing paper or fee)</p>
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

RE: Payment - July and August 1999 Deposit Account Statements

---

The following are enclosed:

Checks for \$24,368 and \$17,389; transmittal letter; return postcard and top portions of each of the Statements (July and August 1999).

Respectfully submitted,

Frances B. Cutajar

Frances B. Cutajar  
Senior Legal Assistant

White & Case LLP  
Patent Department  
1155 Avenue of the Americas  
New York, New York 10036

(212) 819-8200

Enclosures

# WHITE & CASE

LIMITED LIABILITY PARTNERSHIP

UNITED STATES  
LOS ANGELES  
MIAMI  
NEW YORK  
WASHINGTON, D.C.

EUROPE  
BRUSSELS  
BUDAPEST  
HELSINKI  
ISTANBUL  
LONDON  
MOSCOW  
PARIS  
PRAGUE  
STOCKHOLM  
WARSAW

AFRICA  
JOHANNESBURG  
**Express Mail EH623283139US**

1155 AVENUE OF THE AMERICAS  
NEW YORK, NEW YORK 10036-2787

TELEPHONE: (1-212) 819-8200  
FACSIMILE: (1-212) 354-8113

DIRECT DIAL: (212) 819-8368

ASIA  
ALMATY  
ANKARA  
BANGKOK  
BOMBAY  
HANOI  
HO CHI MINH CITY  
HONG KONG  
SINGAPORE  
TOKYO

MIDDLE EAST  
JEDDAH  
RIYADH

LATIN AMERICA  
MEXICO CITY  
SAO PAULO

Date: September 16, 1999

Commissioner of Patents  
Box 16  
Washington, D.C. 20231

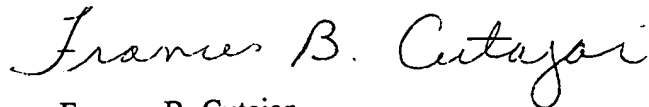
Re: White & Case Deposit Account  
Account No. 23-1703  
(July and August 1999)

Dear Sir:

Enclosed are two checks (\$24,368 and \$17,389.00). Please replenish Deposit Account No. 23-1703 with the combined amount of \$41,757. We request that these checks be posted as soon as possible.

Thank you.

Sincerely,



Frances B. Cutajar  
Senior Legal Assistant

Enclosures

Serial No. \_\_\_\_\_

**Sir:**

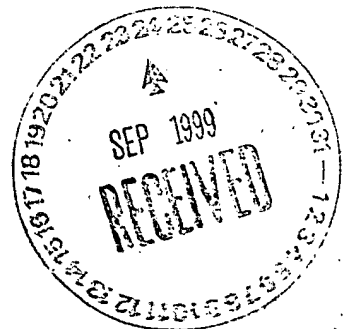
Kindly acknowledge receipt of the accompanying:  
and claims \_\_\_\_\_

- Kindly acknowledge receipt of the accompanying:
- ☐ Specification and claims \_\_\_\_\_ pages
- ☐ Oath or Declaration and Power of Attorney ☐ Executed ☐ Not Executed
- ☐ \_\_\_\_\_ Sheets of \_\_\_\_\_ formal \_\_\_\_\_ informal drawings
- ☒ Check for \$ 24,368 (filing fee) and \$ 17,389 + J
- ☐ Small entity declaration
- ☐ Assignment and Check for \$ \_\_\_\_\_
- ☐ Request 37 CFR ☐ 1.60 ☐ 1.62
- ☐ Petition under 37 CFR 1.136 and Check \$ \_\_\_\_\_
- ☐ Other (specify) \_\_\_\_\_

by placing your receiving date stamp hereon and mailing or returning to deliverer.

Atty. \_\_\_\_\_ Due Date Mo. Day Yr.

~~37 CFR 1.8~~ ☐  
37 CFR 1.10 ☒  
By Hand



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